

FILED BY CLERK

JUN -1 2009

COURT OF APPEALS
DIVISION TWO

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	2 CA-CR 2008-0368
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
JOHN DANIEL VAUGHN,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20042813

Honorable Howard Fell, Judge Pro Tempore

VACATED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Joseph L. Parkhurst

Tucson
Attorneys for Appellee

Robert J. Hirsh, Pima County Public Defender
By Michael J. Miller

Tucson
Attorneys for Appellant

H O W A R D, Presiding Judge.

¶1 John Daniel Vaughn appeals the trial court's order vacating its prior order to expunge Vaughn's deoxyribonucleic acid (DNA) profile from the Arizona DNA Identification System. Vaughn argues that, pursuant to *State v. Bryant*, 219 Ariz. 514, 200 P.3d 1011 (App. 2008), the trial court did not have jurisdiction to vacate its order. The state concedes error and requests that this court set aside the trial court's October 3, 2008 order¹ vacating its original order expunging Vaughn's DNA profile. Because the facts presented here do not materially differ from those in *Bryant*, we accept the state's concession of error and vacate the trial court's October 3 order.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

PHILIP G. ESPINOSA, Judge

¹This order was actually filed on October 8, 2008.

